

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMAR C. DAVIS,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 245, 2012

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§ Court Below—Superior Court

§ of the State of Delaware

§ in and for New Castle County

§ Cr. ID No. 1007007279

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Submitted: May 10, 2012

Decided: June 1, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 1st day of June 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lamar C. Davis, filed an appeal from the Superior Court’s April 11, 2012 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, on February 8, 2011, Davis entered a plea of guilty to Assault in the Third Degree and Terroristic Threatening. He was sentenced on the assault conviction to 1 year at Level V incarceration, to be suspended for 1 year at Level III probation. On the terroristic threatening conviction, he was sentenced to 1 year at Level V, to be suspended after 205 days for the balance of the sentence at Level IV.²

(3) On April 11, 2012, Davis was found to have committed a VOP. On the violation of his probationary sentence for assault, he was sentenced to 6 months at Level V, with credit for 37 days served. The sentencing order provided that, pursuant to Del. Code Ann. tit. 11, §4204(k), the Level V portion of the sentence would be served without the benefit of any form of early release and that, once that portion of the sentence was served, Davis would be discharged as unimproved. Davis was discharged as unimproved for violating his probationary sentence for terroristic threatening.

(4) In this appeal from the Superior Court's April 11, 2012 VOP sentencing order, Davis claims that his VOP sentence is excessive, given

¹ Supr. Ct. R. 25(a).

² The 205-day period represented the time Davis spent at Level V in default of bail since the date of his arrest.

that his Level III probation was due to expire shortly after the VOP was lodged against him. He also claims that he has not been given proper credit for the time he has served at Level V.

(5) This Court's review of a Superior Court sentencing order generally is limited to whether the sentence exceeds the statutory limits.³ A defendant who is found to have committed a VOP may be sentenced to serve all the time remaining on his original Level V sentence.⁴ Moreover, it is immaterial whether a defendant's probation is due to expire shortly after the VOP is lodged against him.⁵

(6) Once Davis was found to have committed a VOP in connection with his sentence for assault, the Superior Court had the authority to impose the entire 1 year suspended Level V sentence (with credit for 37 days served at Level V in default of bail). Instead, the Superior Court imposed a 6-month Level V sentence. Far from being excessive, the sentence imposed was half of what the Superior Court could properly have imposed. Moreover, nothing in the record before us reflects that Davis has not been given proper credit for all the time he has spent at Level V. As such, we conclude that Davis's claims are without merit.

³ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁴ *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005); Del. Code Ann. tit. 11, §4334(c).

⁵ *Tiller v. State*, 257 A.2d 385, 387-88 (Del. 1969).

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice